

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DIANA D.,¹
12 Plaintiff

13 v.

14 ANDREW M. SAUL, Commissioner
15 of Social Security,²
16 Defendant.

Case No. 5:18-cv-01996-GJS

**MEMORANDUM OPINION AND
ORDER**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff Diana D. (“Plaintiff”) filed a complaint seeking review of the
19 decision of the Commissioner of Social Security denying her application for
20 Disability Insurance Benefits (“DIB”). Pursuant to 28 U.S.C. § 636(c), the parties
21 consented to proceed before the undersigned United States Magistrate Judge and
22 filed briefs addressing the disputed issues in this case. [Dkt. 17 (“Pl. Br.”), Dkt. 21
23 (“Def. Br.”), Dkt. 22 (“Reply”).] The Court has taken the parties’ briefing under
24 submission without oral argument. For the reasons set forth below, the Court
25

26 ¹ In the interest of privacy, this Order uses only the first name and the initial of
27 the last name of the non-governmental party in this case.

28 ² Andrew M. Saul, now Commissioner of the Social Security Administration, is
substituted as defendant for Nancy A. Berryhill. *See* Fed. R. Civ. P. 25(d).

1 affirms the decision of the ALJ and orders that judgment be entered accordingly.

2 3 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

4 On October 24, 2014, Plaintiff filed an application for DIB alleging disability
5 beginning May 14, 2010. [Dkt. 14, Administrative Record (“AR”) 145-147.] In
6 both applications, Plaintiff stated that she became disabled and unable to work due
7 to her physical impairments. Defendant denied her application on initial review and
8 reconsideration, and Plaintiff was found not disabled by an Administrative Law
9 Judge (“ALJ”) in a September 20, 2017 decision. [AR 15-23.] Plaintiff sought
10 review of the ALJ’s decision, which was denied. The present case before the Court
11 followed.

12 As relevant here, ALJ’s decision under review found that Plaintiff had severe
13 impairments including pancreatitis, cervical spine degenerative disc disease, lumbar
14 spine degenerative disc disease, hernia, and obesity. [AR 17.] The ALJ then found
15 that Plaintiff did not have an impairment or combination of impairments that met or
16 medically equaled a listed impairment. [AR 17.] Based on her impairments, the
17 ALJ found that Plaintiff had the Residual Functional Capacity (“RFC”) to perform
18 the full range of light work as defined in 20 CFR 404.1567(b). [AR 19.]

19 The ALJ then determined that Plaintiff could perform her past relevant work
20 and therefore she was not under a disability through her date last insured. [AR 22-
21 23.]

22 23 **III. GOVERNING STANDARD**

24 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
25 determine if: (1) the Commissioner’s findings are supported by substantial
26 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
27 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r*
28 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012) (internal citation omitted).

1 “Substantial evidence is more than a mere scintilla but less than a preponderance; it
2 is such relevant evidence as a reasonable mind might accept as adequate to support a
3 conclusion.” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir.
4 2014) (internal citations omitted).

5 The Court will uphold the Commissioner’s decision when the evidence is
6 susceptible to more than one rational interpretation. *See Molina v. Astrue*, 674 F.3d
7 1104, 1110 (9th Cir. 2012). However, the Court may review only the reasons stated
8 by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he
9 did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not
10 reverse the Commissioner’s decision if it is based on harmless error, which exists if
11 the error is “inconsequential to the ultimate nondisability determination, or if despite
12 the legal error, the agency’s path may reasonably be discerned.” *Brown-Hunter v.*
13 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations
14 omitted).

15 IV. DISCUSSION

16 Appealing the Commissioner’s decision to deny her application for benefits,
17 Plaintiff argues the ALJ erred in his evaluation of her subjective complaints,
18 specifically that she could not complete a full work day due to her chronic
19 pancreatitis. (Doc. 15 at 16-26.). According to Plaintiff, because “she has to lie
20 down more than half the day,” she cannot complete her past relevant work as
21 determined by the ALJ. Therefore, the sole issue in dispute is whether the ALJ
22 properly evaluated Plaintiff’s subjective symptom testimony.

23 A. Legal Standard

24 Where, as here, the ALJ finds that a claimant suffers from a medically
25 determinable physical or mental impairment that could reasonably be expected to
26 produce her alleged symptoms, the ALJ must evaluate “the intensity and persistence
27 of those symptoms to determine the extent to which the symptoms limit an
28 individual’s ability to perform work-related activities for an adult” Soc. Sec.

1 Ruling (“SSR”) 16-3p, 2017 WL 5180304, *3.6.

2 A claimant initially must produce objective medical evidence establishing a
3 medical impairment reasonably likely to be the cause of the subjective symptoms.
4 *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Bunnell v. Sullivan*, 947 F.2d
5 341, 345 (9th Cir. 1991). Once a claimant produces objective medical evidence of
6 an underlying impairment that could reasonably be expected to produce the pain or
7 other symptoms alleged, and there is no evidence of malingering, the ALJ may
8 reject the claimant’s testimony regarding the severity of his or her pain and
9 symptoms only by articulating specific, clear and convincing reasons for doing so.
10 *Brown-Hunter v. Colvin*, 798 F.3d 749, 755 (9th Cir. 2015) (citing *Lingenfelter v.*
11 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)); *see also Smolen, supra*; *Robbins v.*
12 *Social Sec. Admin*, 466 F.3d 880, 883 (9th Cir. 2006); *Reddick v. Chater*, 157 F.3d
13 715, 722 (9th Cir. 1998); *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
14 1997). Because the ALJ does not find that Plaintiff was malingering, the “clear and
15 convincing” standard stated above applies.

16 Generalized, conclusory findings do not suffice. *See Moisa v. Barnhart*, 367
17 F.3d 882, 885 (9th Cir. 2004) (the ALJ’s credibility findings “must be sufficiently
18 specific to allow a reviewing court to conclude the [ALJ] rejected [the] claimant’s
19 testimony on permissible grounds and did not arbitrarily discredit the claimant’s
20 testimony”) (citation and internal quotation marks omitted); *Holohan v. Massanari*,
21 246 F.3d 1195, 1208 (9th Cir. 2001) (the ALJ must “specifically identify the
22 testimony [the ALJ] finds not to be credible and must explain what evidence
23 undermines the testimony”); *Smolen*, 80 F.3d at 1284 (“The ALJ must state
24 specifically which symptom testimony is not credible and what facts in the record
25 lead to that conclusion.”).

26 **B. Plaintiff’s Testimony**

27 At the hearing, Plaintiff testified about her impairments including: chronic
28 pancreatitis, neck pain, back pain, and headaches. Plaintiff testified that she was

1 diagnosed with chronic pancreatitis in 2008, approximately two years before her
2 May 14, 2010 disability onset date. [AR 38.] Plaintiff's pancreatitis causes "a real
3 deep pain in her stomach" and nausea. [AR 38.] To treat her pancreatitis, Plaintiff
4 takes Creon, an enzyme medication, daily, because her body no longer produces
5 enzymes. [AR 39.]

6 When asked about her other impairments, Plaintiff testified that she also
7 suffers from neck pain, back pain, and muscle spasms, but her treatment for those
8 symptoms has been delayed due to her aneurysm diagnosis. In November 2015,
9 Plaintiff was diagnosed with an aneurysm that causes severe headaches, blurred
10 vision and muscle spasms in the back of her head, down to her lower back. [AR
11 42.] Plaintiff has had five endovascular procedures to place coils in her aneurysm in
12 order to reduce its size. [AR 42.] However, because the aneurysm is still growing,
13 Plaintiff may need "open head" surgery in the future. [AR 42.] Plaintiff also suffers
14 from sciatic nerve pain that she cannot relieve due to her ibuprofen allergy. [AR 40-
15 41.]

16 When asked about her limitations due to her impairments, Plaintiff testified
17 that she has difficulty walking for longer than 20 minutes, difficulty standing and
18 sitting for prolonged periods, and she needs to lie down more than half the day. [AR
19 43-45].

20 **C. The ALJ's Decision Sets Forth At Least One Clear and Convincing**
21 **Reason for Rejecting Plaintiff's Credibility**

22 With respect to Plaintiff's "debilitating pancreatitis," the ALJ initially found
23 that Plaintiff's allegations were inconsistent with the medical evidence of record.³
24 [AR 19.] Specifically, the ALJ noted that Plaintiff's "physical examination revealed
25 normal findings" and "a comprehensive metabolic panel" was within normal limits.
26 [AR 19.] The ALJ further observed that treatment records reflected that Plaintiff's

27 ³ Plaintiff does not challenge the ALJ's findings with respect to inconsistency
28 with the objective medical evidence.

1 pancreatitis was “generally well controlled” with medications, when Plaintiff “was
2 compliant with taking them as prescribed treatment.” [AR 19.]

3 The Court’s review of the record reveals that the ALJ properly discounted
4 Plaintiff’s testimony about the intensity, persistence and limiting effects of her
5 pancreatitis based on Plaintiff’s consistent and positive response to her
6 medication, when taken as prescribed. [AR 19, 302-307.] The effectiveness of
7 treatment is a relevant factor in determining the severity of a claimant’s symptoms.
8 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); *see also Warre v. Comm’r of Soc. Sec.*
9 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled
10 effectively with medication are not disabling for the purpose of determining
11 eligibility for ... benefits.”). Substantial evidence of effective treatment may provide
12 a specific, clear, and convincing reason to discount a claimant’s subjective symptom
13 testimony. *See Youngblood v. Berryhill*, 734 F. App’x 496, 499 (9th Cir. 2018)
14 (affirming ALJ decision citing “instances where treatment and medication alleviated
15 [the claimant’s] symptoms” to discount claimant’s testimony).

16 Here, the ALJ set out ample evidence demonstrating that Plaintiff’s
17 impairments were effectively controlled with medication. First, in summarizing
18 Plaintiff’s pancreatitis treatment between 2011 through Plaintiff’s date last insured,
19 December 31, 2014;⁴ the ALJ noted that on September 18, 2011, Plaintiff reported
20 to the hospital for evaluation of significant abdominal pain. [AR 19.] Upon
21 admission, Plaintiff acknowledged that she had not been compliant with her
22 medications because she lost her insurance prior to hospitalization. [AR 20, 304-
23 307.] Plaintiff remained in the hospital for four days and her condition improved
24 with treatment. [AR 20, 303.] Plaintiff was restarted on medications and she was
25

26
27 ⁴ The ALJ read and considered all the medical evidence in the record, including
28 evidence from the period prior to Plaintiff’s alleged onset date. However, the ALJ
concluded that there was no evidence to support any disabling functional limitation
prior to the Plaintiff’s date last insured. [AR 19.]

recommended to follow-up with a gastroenterologist at a clinic after discharge. [AR 20.] Plaintiff was hospitalized again on April 1, 2012. [AR 288.] However, her follow-up appointment on April 9, 2012, noted that Plaintiff had presented to the emergency department [on April 1, 2012] with pancreatitis symptoms because she could no longer afford her pancreatitis medications. [AR 420.] Based on this evidence, it was rational for the ALJ to infer that when Plaintiff was hospitalized in 2011 and 2012 it was due to the fact that she failed to take her prescribed medications.

Plaintiff's failure to take her medications also resulted in a hospital stay in 2013. On May 16, 2013, Plaintiff was directed to continue her use of "Creon and Cholestyramine" for treatment of her pancreatitis. [AR 394.] However, two months later, on July 24, 2013, Plaintiff visited the emergency room with complaints of "epigastric abdominal discomfort and vomiting for the last day." [AR 402.] Plaintiff was reported as taking "dicyclomine, tramadol, and Creon." [AR 402.] At her follow-up appointment on December 5, 2013, Plaintiff's "epigastric pain [was] significantly better." [AR 401.] The physician noted that Plaintiff is compliant with "Creon and cholestyramine," but "her pain worsened once she tried to stop cholestyramine." [AR 401.] This is record evidence, as the ALJ noted that Plaintiff's symptoms were controlled when Plaintiff took her medication as prescribed. [AR 20.]

Indeed, in a series of follow-up appointments, Plaintiff's epigastric pain was frequently described as: improved while compliant with her medication (AR 386 - May 9, 2013; AR 394 -May 16, 2013); "somewhat improved" (AR 442, September 26, 2012); "doing well" (AR 373, August 14, 2013); and "significantly better" (AR 401, December 5, 2013)." With only few variations, Plaintiff consistently reported her pancreatitis related pain as "mild" or a 4 out of 10 with her abdominal pain symptoms noted as relieved by pain medication. [AR 371, 382, 439, 442, 447.]

Given the weight of this evidence, the ALJ correctly inferred from the

1 longitudinal record that Plaintiff's symptoms from pancreatitis were generally short
2 lived and medication was effective in controlling her symptoms when she was
3 compliant with prescribed treatment. [AR 19, 21, 354, 357- 359, 363, 371, 373, 388,
4 429, 442.] *See Macri v. Charter*, 93 F.3d 540, 544 (9th Cir. 1996) (ALJ is entitled
5 to draw inferences logically flowing from the evidence).

6 In rejecting the ALJ's analysis, Plaintiff argues that the reason her symptoms
7 were well controlled is because she lies down half the day. (Dkt. 17 at 2, 6).
8 However, it appears that Plaintiff attributes her need to nap throughout the day to
9 controlling her headaches and not entirely to ameliorating her pancreatitis
10 symptoms. At the hearing, Plaintiff testified that she was diagnosed with an
11 aneurysm in November 2015 that causes "severe headaches, blurred vision, eye pain
12 and muscle spasms." [AR 41-42.] The ALJ then asked Plaintiff about her
13 impairment related limitations as follows:

14 [Q]: And do you lie down during the day?

15 [A]: Yes, I do.

16 [Q]: How much of your day do you spend lying down?

17 [A]: Oh, man, half the day.

18 [Q]: And why is that? Why do you feel you need to lie down?

19 [A]: Because of the headaches that I get. They get so severe.

20 [AR 44.]

21 As the ALJ noted, while there was evidence that Plaintiff's condition did
22 worsen in 2015, when Plaintiff was diagnosed with an aneurysm requiring coil
23 embolization, these records are not within the relevant time period. [AR 19.]

24 Ultimately, the ALJ cited at least one clear and convincing reason for
25 rejecting Plaintiff's subjective complaints regarding the intensity, duration, and
26 limiting effects of her symptoms. Moreover, the ALJ's reason was properly
27 supported by the record and sufficiently specific to allow this Court to conclude that
28 the ALJ rejected Plaintiff's testimony on permissible grounds and did not arbitrarily

1 discredit Plaintiff's testimony. Accordingly, reversal is not warranted based on the
2 ALJ's consideration of Plaintiff's testimony regarding the nature and severity of her
3 symptoms.

4 **V. CONCLUSION**

5 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
6 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

7 **IT IS SO ORDERED.**

8
9 DATED: October 15, 2019

10 
11 _____
12 GAIL J. STANDISH
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28